

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CLARENCE W. MCQUEEN

Appeal No. 2000-2036
Application 08/897,484

ON BRIEF

Before KRASS, JERRY SMITH and DIXON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

ON REQUEST FOR REHEARING

The Board of Patent Appeals and Interferences mailed a decision in this application on August 21, 2002 in which the rejection of claims 1, 4 and 6-8 as unpatentable under 35 U.S.C. § 102(b) was affirmed. In response to this decision, appellant has nominally filed under 37 CFR § 1.196 a new set of claims, added amendments to the specification of this application, and argued the rejection of claim 4. Since prosecution before the

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examiner has closed, the new claims and the amendments to the specification will not be considered. We are treating appellant's arguments with respect to claim 4 as a request for rehearing of our original decision under 37 CFR § 1.197.

Claim 4 was rejected by the examiner as anticipated by the disclosure of Szabo. Appellant argues that Szabo does not disclose a ferromagnetic tube as claimed. Appellant also makes additional arguments which were not specifically made in the brief on appeal.

With respect to the first argument, the examiner had read the claimed ferromagnetic tube on the ring-shaped wall 4 of Szabo. Based on the record before us, we agreed with the examiner that element 4 of Szabo was a ferromagnetic tube as claimed. Appellant has still presented no arguments as to why the ring-shaped wall 4 of Szabo, by itself, is not a ferromagnetic tube. As interpreted by the examiner, Szabo discloses a ferromagnetic tube 4 surrounded by a conductor 13. Appellant did not present any persuasive arguments in the appeal brief that would demonstrate that the examiner's findings were erroneous, and has presented no arguments in this request for rehearing to that effect.

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Appellant's arguments that the conductor 13 of Szabo is within the shell cavity and does not produce a magnetic field on the outside are arguments which were not presented before the examiner in the appeal brief. The Board does not consider arguments in a request for rehearing which were not made in the original brief because we do not have the benefit of the examiner's position with respect to these new arguments. Therefore, we will not consider appellant's arguments near the bottom of the request for rehearing.

In summary, we have carefully considered the arguments raised by appellant in the request for rehearing, but we can find no errors in our original decision. We are still of the view that the invention set forth in claim 4 is anticipated by the disclosure of Szabo.

We have granted appellant's request to the extent that we have reconsidered our decision of August 21, 2002, but we deny the request with respect to making any changes therein.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

DENIED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	
JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JOSEPH L. DIXON)	
Administrative Patent Judge)	

JS/ki

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